



### **483-B:5-b Permit Required; Exemption.**

I. (a) No person shall commence construction, excavation, or filling activities within the protected shoreland without obtaining a permit from the department to ensure compliance with this chapter.

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### **Administrative Rules**

Chapter Env-Wq 1400 **Shoreland Protection** in effect beginning 12/20/08.

This document can be found on the Shoreland Protection website or you can go directly to:

**[www.des.nh.gov/Rulemaking/index.html#adopted](http://www.des.nh.gov/Rulemaking/index.html#adopted)**

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### **Exemptions by Law**

- True agricultural activities
- Timber harvesting conducted in accordance with RSA 227-J:9
- Forestry for water supply maintenance
- Impacts covered by a wetlands permit

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### **Clarifying the “Wetlands Exemption”**

This Exemption only covers the specific **impacts** authorized by the Wetlands Permit.

**Impacts** that will occur outside of the jurisdiction of the Wetlands Act are not exempted from the permit requirement of the Shoreland Protection Act.

**Projects** that have impacts in both Wetlands jurisdiction and the protected Shorelands beyond Wetlands jurisdiction will in fact need both permits.

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### **Exemptions by Rule**

**483-B:17 Rulemaking.** The commissioner shall adopt rules, pursuant to RSA 541-A, relative to...

XI. Procedures and criteria for permitting under RSA 483-B:5-b, including permit by notification and the identification of those activities that may be conducted without obtaining a permit, all consistent with the provisions of this chapter.

**Exemptions outlined in Rule Env-Wq 1406.04**

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### **Projects Considered Vested**

#### **Rule Env-Wq 1406.03**

- Building permit issued before January 1, 2008
- Subject of notice of local PB or ZBA prior to July 1, 2007
- Alteration of Terrain permit issued before July 1, 2008
- Foundation was constructed before July 1, 2008
- Owner has incurred *substantial liability*.

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### **Maintenance and Modification of Existing Structures** Rules Env-Wq 1406.04

#### **Takes Focus off of Projects that do NOT:**

- Increase impervious surfaces
- Involve excavation or fill
- Increase septic loading
- Involve the removal of vegetation

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### **In Case of Emergency...**

#### **In the course of a Natural Disaster:**

1. Secure and stabilize the situation.
2. Notify DES of the work afterward (within 30 days).
3. If additional work is necessary, then file an application.

**For Specific Details See Rule Env-Wq 1407.02.**

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### **In Case of Emergency...**

**If not an *ACTUAL* disaster, but a threat to public safety, health, or the risk of significant property damage exists:**

1. Notify DES in Writing of work that must be done to stabilize the situation.
2. Receive authorization from DES.
3. Do work as authorized.
4. Apply for a permit for any additional work necessary.

**For Specific Details See Rule Env-Wq 1407.02.**

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### **Forms to be Completed**

- Application Form
- Application Worksheet

#### **IF NEEDED**

- **Waiver Form**
  - NON CONFORMING STRUCTURES ONLY
  - Redevelopment or expansion of footprint
- **Variance Form**
  - New development
  - Condominiums

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### **Attachments**

#### **The easy stuff:**

- Names and addresses of abutters
- Certified Mail Receipts documenting the copies were provided to the municipality and abutters
- NH Natural Heritage Inventory Report
- Copy of deed
- Copy of USGS map (1:24,000 scale) with property located
- Site photos
- Copy of tax map

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### Attachments (cont.)

- Plans
- Planting plan if needed
- Stormwater management plan
- Application Worksheet
- Waiver or Variance form if needed
- FILING FEE

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### Waiver vs Variance

**Waivers** are “project dependent”.

A waiver allows you to take an existing situation and improve it without requiring absolute compliance.

**Variances** are “lot dependent”.

A variance changes the standard of the law as it applies to a property only where a condition of the land itself would result in an unintended consequence of the law and the variance would not adversely affect abutters or violate the spirit and intent of the law.

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### RSA 483-B:10 Nonconforming Lots of Record

- The CSPA cannot be used to render an otherwise buildable lot, unbuildable.
- New construction requires neither waiver nor variance.
- Where existing structures are present a waiver would be required.

Meeting Sub-surface requirements is first priority.

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### Plans

- Show all setbacks
- To scale or dimensioned
- Use “Detail plans” to your advantage
- Separate plans for existing and proposed
- Clearly identify pervious surfaces and attach maintenance needs and schedule
  - Attach documentation outlining infiltration rates
- Limits of areas to remain unaltered

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### When is a stamped surveyed plan needed?

It isn't.

Effective December 20, 2008 stamped survey plans are not required.

If there is a dispute regarding the reference line location or lot size the Department does reserve the right to request a stamped, surveyed plan.

The request would be made under Rule Env-Wq 1406.09, Plans to be Submitted with All Shoreland Applications, (g). Plans that “clearly define” the project.

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### Addressing the Unaltered Area Requirement

Complete the back side of the Application Worksheet

**REMEMBER:** Unaltered means “in a natural state”

If the areas remaining in a natural state are already less than the minimum required clearly state this on the worksheet.

If areas are below the minimum they cannot be reduced further.

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### Understanding the Unaltered Area Requirement

“Unaltered” means “natural”. If there are no “natural” looking areas left then everything is altered. Replanting is not required.

#### Where unaltered areas remain...

Requirement is dependent on lot size

#### ½ acre or less within 150 ft

25% of area between 50 and 150 ft must remain unaltered

#### More than ½ acre within 150 ft

50% of area not covered by impervious surfaces between 50 and 150 ft must remain unaltered

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### When Do I Need to Map Trees?

There are 2 situations where trees need to be mapped.

1. Work will occur within the 50 ft Waterfront Buffer.

#### What needs to be shown:

- Only the 50 ft segments in which impacts will occur.
- All trees up to those needed to meet the 50 point (or proportional) requirement.

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### When Do I Need to Map Trees? (Cont.)

2. Project will result in more than 20 % impervious surface cover.

#### What needs to be shown:

- All trees up to those needed to meet the 50 point (or proportional) requirement.

If there are not sufficient trees to meet the 50 point requirement in any given segment, then a planting plan for the deficient segments meeting Part Env-Wq 1412 will be required.

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### How to File the Application

#### YES

- ✉ Mail it to the DES offices at PO Box 95 in Concord
- ✉ Hand Deliver it to DES at 29 Hazen Drive in Concord

#### Do NOT

- ✉ Drop it off at the Town... They will not mail it for you
- ✉ Email it.

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### What to Expect

**Immediately** Acknowledgement of Receipt Letter

**Within 30 days** Decision

**OR** Possible More Information Request

Applicants have 60 days to respond to More Information Requests.

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### Links to Important Information

**Shoreland Program Page**  
[www.des.nh.gov](http://www.des.nh.gov) (use Hot Topics links)

**Jurisdictional Waters:**  
[http://des.nh.gov/organization/divisions/water/wetlands/cspa/water\\_bodies.htm](http://des.nh.gov/organization/divisions/water/wetlands/cspa/water_bodies.htm)

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